

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICK ROCK,

Plaintiff,

- against -

ENFANTS RICHES DEPRIMES, LLC,
BARNEYS NEW YORK, INC. and
THE REALREAL, INC.

Defendants.

1:17-cv-02618 (ALC-DCF)

ECF Case

**PLAINTIFF'S NOTICE OF PROCEDURAL OBJECTION TO
DEFENDANT'S NOVEL ARGUMENT IN ITS REPLY BRIEF**

PLEASE TAKE NOTICE that Plaintiff hereby objects to Defendant's Reply Brief in Further Support of Defendant's Motion for Summary Judgment [Dkt. #56] (the "Reply") to the extent it raises a new argument and/or motion for the first time on reply. In Defendant's Reply, Defendant invokes section 505 of the Copyright Act and asks the Court to award its attorneys' fees. [Dkt. #56, Point II, ECF p. 8 of 9].

The Reply marks the first time that Defendant raises a motion pursuant to 17 U.S.C. § 505 given that neither Defendant's Notice of Motion [Dkt. #46] nor its principal brief in support thereof [Dkt. # 47] makes any reference whatsoever to section 505. The Second Circuit has clearly stated that arguments raised for the first time in reply papers or thereafter are properly ignored. *See Watson v. Geithner*, 355 F. App'x 482, 483 (2d Cir.2009) (court should decline to consider an argument raised for the first time in a reply brief); *ABN Amro Verzekeringen BV v. Geologistics Americas, Inc.*, 485 F.3d 85, 97 n. 12 (2d Cir.2007) (same); *Clubside, Inc. v.*

Valentin, 468 F.3d 144, 159 n. 5 (2d Cir.2006) (same); *US Engine Prod., Inc. v. ISO Grp., Inc.*, No. 12–CV–4471, 2013 WL 4500785, at *8 (E.D.N.Y. Aug. 20, 2013) (“[A] party cannot raise arguments for the first time in a reply brief.”); *Rodriguez v. Rivera*, No. 12–CV–5823, 2013 WL 5544122, at *13 n. 4 (S.D.N.Y. Sept. 16, 2013) (declining to address arguments raised for first time in reply brief (citing *Knipe v. Skinner*, 999 F.2d 708, 711 (2d Cir.1993))).

Accordingly, Plaintiff respectfully reserves the right to oppose any motion pursuant to section 505 if such motion is properly brought pursuant to the Federal Rules of Civil Procedure.

Respectfully Submitted,

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